

Meeting Date: 3/29/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 5B
SA



DATE: March 23, 2011

TO: Executive Director for Stadium Authority Board Action

FROM: Elizabeth H. Silver, Interim Authority Counsel

SUBJECT: Adoption of a Resolution Adopting Local CEQA Guidelines

EXECUTIVE SUMMARY:

The California Environmental Quality Act ("CEQA") (Pub. Res. Code § 21000 et seq.) requires public agencies to undertake an environmental review process prior to the approval of various discretionary development projects. In order to carry out this review process, CEQA requires that public agencies adopt objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports and negative declarations. (Pub. Res. Code § 21082; State CEQA Guidelines § 15022.) Pursuant to this obligation, the City of Santa Clara adopted the Local Procedure for Implementing the California Environmental Quality Act of 1970 in 1992 (Resolution No. 5713), and the CEQA Monitoring or Reporting Program in 1993 (Resolution No. 5845) (collectively, the "Local CEQA Guidelines").

On February 22, 2011, by City of Santa Clara Resolution No. 11-7825, the City authorized the execution of a Joint Powers Agreement with the Santa Clara Redevelopment Agency to form the Santa Clara Stadium Authority ("Stadium Authority"). As a newly formed public entity, the Stadium Authority must adopt local CEQA Guidelines. To that end, staff recommends that the Stadium Authority Board adopt the City's Local CEQA Guidelines as the CEQA Guidelines for the Stadium Authority.

Public agencies are also required to periodically update their local CEQA guidelines. It is anticipated that the City will update its Local CEQA Guidelines in the near future, so the resolution adopts the City's Guidelines subject to such future amendments.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Adoption of the resolution will satisfy the Stadium Authority's legal obligation to adopt local CEQA Guidelines. There are no known disadvantages.


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ECONOMIC/FISCAL IMPACT:

There is no cost to the Stadium Authority other than administrative staff time and expense.

RECOMMENDATION:

That the Stadium Authority Board adopt a Resolution of the Santa Clara Stadium Authority Adopting Local Guidelines for Implementing the California Environmental Quality Act.


for Elizabeth H. Silver
Interim Authority Counsel

APPROVED:


for Jennifer Sparacino
Executive Director

Documents Related to this Report:

- 1) A Resolution of the Santa Clara Stadium Authority Adopting Local Guidelines for Implementing the California Environmental Quality Act***

RESOLUTION NO. _____ (SA)

**A RESOLUTION OF THE SANTA CLARA STADIUM
AUTHORITY ADOPTING LOCAL GUIDELINES FOR
IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT**

BE IT RESOLVED BY THE SANTA CLARA STADIUM AUTHORITY AS FOLLOWS:

WHEREAS, the California Environmental Quality Act (“CEQA”) (Public Resources Code § 21000 et seq.) and the State CEQA Guidelines (14 Cal. Code of Regs. § 15000 et seq.) require public agencies to undertake an environmental review process prior to the approval of development projects;

WHEREAS, to carry out this process, CEQA requires that public agencies adopt objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports and negative declarations (Pub. Res. Code § 21082; CEQA Guidelines § 15022);

WHEREAS, pursuant to this obligation, the City of Santa Clara adopted the Local Procedure for Implementing the California Environmental Quality Act of 1970 in 1992 (Resolution No. 5713) and the CEQA Monitoring or Reporting Program in 1993 (Resolution No. 5845) (collectively, the “Local CEQA Guidelines”);

WHEREAS, on February 22, 2011, by City of Santa Clara Resolution No. 11-7825, the City of Santa Clara authorized the execution of a Joint Powers Agreement with the Santa Clara Redevelopment Agency to form the Santa Clara Stadium Authority (“Stadium Authority”);

WHEREAS, as a newly formed public entity, the Stadium Authority must adopt local CEQA guidelines; and

WHEREAS, the Stadium Authority now seeks to adopt the City’s Local CEQA Guidelines as the CEQA Guidelines for the Stadium Authority.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE SANTA CLARA STADIUM AUTHORITY AS FOLLOWS:

1. That the Santa Clara Stadium Authority Board hereby adopts the City of Santa Clara Local Procedure for Implementing the California Environmental Quality Act of 1970, as may be amended from time to time.
2. That the Santa Clara Stadium Authority Board hereby adopts the City of Santa Clara CEQA Monitoring or Reporting Program, as may be amended from time to time.
3. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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4. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE SANTA CLARA STADIUM AUTHORITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE __ DAY OF _____, 2011, BY THE FOLLOWING VOTE:

AYES: AUTHORITY BOARD MEMBERS:

NOES: AUTHORITY BOARD MEMBERS:

ABSENT: AUTHORITY BOARD MEMBERS:

ABSTAINED: AUTHORITY BOARD MEMBERS:

ATTEST:

ROD DIRIDON, JR.
SECRETARY OF THE STADIUM AUTHORITY
SANTA CLARA STADIUM AUTHORITY

Attachments incorporated by reference:

1. City of Santa Clara Local Procedure for Implementing the California Environmental Quality Act of 1970
2. City of Santa Clara CEQA Monitoring or Reporting Program
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RESOLUTION NO. 5713

RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA,
ADOPTING LOCAL ENVIRONMENTAL REVIEW PROCEDURES,
AS AMENDED AND SET FORTH IN EXHIBIT A

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA,
CALIFORNIA, (herein "City") as follows:

WHEREAS, it is the desire of the City Council that the City
Council Resolution No. 3993, which previously amended and adopted
the City's local processing procedures be formally modified and
revised to reflect current State of California requirements.

NOW, THEREFORE, BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF
THE CITY OF SANTA CLARA, CALIFORNIA, as follows:

1. That the City of Santa Clara hereby adopts the Division 6,
Title 14, of the California Code of Regulations for
implementation of the California Environmental Quality Act of
1970, as amended from time to time.
2. That Resolution 3993 is hereby modified and revised to reflect
current State of California requirements. The local
processing procedures are hereby adopted to read as set forth
in Exhibit A, attached hereto and incorporated herein by
reference, entitled "CITY OF SANTA CLARA - 1992 REVISION OF
LOCAL PROCEDURE FOR IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT OF 1970".
3. To the extent that any provision of the local processing
procedures hereby adopted are not mandated by State laws as an
essential element of the environmental review process, any

defect or error, of act or omission, in carrying them out, including, but not limited to, errors in or pertaining to the giving of any notice, shall not divest the City staff, Planning Commission or City Council of jurisdiction nor invalidate any proceedings.

4. If any section, subsection, sentence, clause or phrase of this Resolution or the processing procedures hereby adopted, are for any reason held by a Court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of the Resolution or such local processing procedures. The City Council hereby declares that it would have passed this Resolution and such local processing procedures, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause and phrase thereof be declared invalid.

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I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 23rd day of June, 1992, by the following votes:

AYES: COUNCILORS: DeLozier, Deto, Jeffries, Lasher, Nadler, Von Raesfeld and Mayor Souza
NOES: COUNCILORS: None
ABSENT: COUNCILORS: None
ABSTAINED: COUNCILORS: None

ATTEST: J. E. Boccignone
J. E. BOCCIGNONE
City Clerk
City of Santa Clara, California

EXHIBIT A

CITY OF SANTA CLARA

REVISION OF LOCAL PROCEDURE FOR IMPLEMENTING THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970
(As of June 23, 1992)

I. POLICY.

It is the policy of the City of Santa Clara, California (herein "City") to comply with all applicable California laws and regulations, including, but not limited to, the following:

1. the provisions of the California Environmental Quality Act (herein "CEQA") of 1970, set forth in Division 13 of the California Public Resources Code (herein "PRC") §21000 et seq., or as such laws may be subsequently amended,
2. the regulations set forth in Title 14 of the California Code of Regulations (herein "CCR") § 15000 et seq., or as such regulations may be subsequently amended,
3. the mitigation monitoring and reporting requirements as set forth in the California Public Resources Code §21081.6, or as such laws may be subsequently amended, and
4. the local procedures hereafter set forth.

II. ADOPTION OF STATE OF CALIFORNIA CEQA GUIDELINES.

The regulations currently set forth in Title 14 of the CCR, and Appendices A through K, inclusive, (herein the "State CEQA Guidelines") as such regulations may be subsequently amended, are adopted as the City of Santa Clara's local procedures and incorporated herein by reference as if set forth in full, except as otherwise provided herein.

III. LOCAL PROCEDURE.

1. Administration of Environmental Quality.

The Project Clearance Committee, made up of the City Manager, Director of Planning and Inspection and Director of Public Works, or their respective designees (herein the "Committee"),

is designated to administer all projects for environmental determinations, including but not limited to those projects of a lead agency. The Committee may establish any additional procedures and forms that will expedite the CEQA process and the preparation of other environmental documents.

The Committee will review all applications being made to the City for permits to carry on proposed projects involving land uses or other activities which may affect the environment. The Committee will also review all public projects proposed which may have an impact on the environment. The Committee shall also be responsible for coordination among the various City departments.

In administering protection of the environmental qualities of the City, careful consideration must be given to the effect on all other resources and activities. The objective will be to cause the least possible conflict with other uses and activities while making full and proper provision for preservation of environmental qualities. Environmental needs must be given equal consideration.

2. Fees.

The City shall charge and receive such fees, costs, and charges for services required herein as shall be set by Resolution of the City Council. Additional environmental review fees which may be mandated by the State of California (herein the "State") will be charged to the applicant, as appropriate.

3. Review of Environmental Impact Reports Received from other Public Agencies.

The Director of Planning and Inspection may receive and review all Environmental Impact Reports (herein "EIRs") which are received from other agencies for review by the City. Those EIRs requiring City action or comment shall be referred by the Director to the Committee and members of the City government who may have special expertise or interest in the project involved.

4. Applicant's Environmental Information Form.

Every applicant who files for approval of a discretionary project may be required to submit a completed Environmental Information Form, Appendix H of the State CEQA Guidelines, (herein "Appendix H") to the Committee. An incomplete

Appendix H, as may be determined by the Planning Director or Committee, shall be returned to the applicant within thirty (30) days of its submission.

5. City Project.

Every department or division of the City which proposes a project which may affect the environment, shall submit a completed Appendix H to the Committee. The "Project" includes an activity directly undertaken by any public agency including but not limited to public works construction and related activities, clearing or grading of land, improvements to existing structures, enactment or amendment of zoning ordinances, and the adoption or amendment of local general plans or elements thereof. CEQA compliance should be completed prior to acquisition of a site for a public project, and project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning. An incomplete Environmental Information Form, as may be determined by the Planning Director or Committee, shall be returned within thirty (30) days of its submission to the project sponsor or other responsible person.

6. Initial Study.

As soon as practicable after submission of a complete application and/or Environmental Information Form, the Committee shall review the project as provided in Article 5 of the State CEQA Guidelines. A determination as to whether a negative declaration or an EIR shall be prepared shall be made within thirty (30) days of accepting an application as complete. The initial study shall provide documentation of the factual basis for the finding of an exemption, negative declaration, or EIR.

7. No Significant Effect - Exemption or Negative Declaration.

A decision to exempt the project or prepare a negative declaration shall be determined based on the regulations as currently set forth in the CCR. Both the advisory body (e.g., Planning Commission) and the decision making body (e.g., City Council) shall consider the proposed negative declaration independently prior to taking action on the project. An opportunity for public review and comments shall be provided for a negative declaration in accordance with the CCR. Any negative declaration shall be prepared directly by, or under contract to, a public agency in accordance with the PRC.

8. Significant Effect - Prepare EIR.

If the Committee or decision making body finds that the project may have a significant effect on the environment on the basis of the provisions of the CCR, the Committee shall then prepare, or cause to be prepared, an EIR. Any draft EIR or EIR shall be prepared directly by, or under contract to, a public agency in accordance with PRC.

9. Preparation of Draft EIR.

The steps to be followed after determination that an EIR is required in the CCR.

10. Public Comment on Draft EIR.

Upon completion of a draft EIR, the City shall consult with and obtain comments from public agencies having jurisdiction by law with respect to the project and should consult with persons having special expertise with respect to any environmental impact involved. The City shall file a Notice of Completion of the draft EIR to indicate a public review period for the document. In addition, the City shall provide a Notice of Availability for public review of the draft EIR.

11. Preparation of Final EIR.

Upon termination of the time period provided for review of the draft EIR, the City shall prepare, or cause to be prepared, a final EIR.

12. Review and Certification of Final EIR.

(a) Review and Certification.

Prior to approval of a project, an advisory body and the decision making body shall review the final EIR. If an advisory body or the decision making body finds that the EIR is deficient, it may require the production of additional information. Before the advisory body and the decision making body may approve the project, it must certify that it has reviewed and considered the information contained in the EIR and that the EIR has been completed and these City procedures.

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(b) Project Approval.

An advisory body and the decision making body shall consider and comply with the provisions of the CCR in approving a project as follows:

- 1) make written findings for each significant effect,
- 2) make an informed approval, and
- 3) adopt a Statement of Overriding Considerations, if appropriate.

The City shall require the applicant to provide a copy of the certified final EIR to each responsible agency.

(c) Notice of Determination.

After a final decision is made on the approval or disapproval of a project, the City Manager, or his/her designee, shall cause to be filed a Notice of Determination (herein "Notice") with the County Clerk of the County of Santa Clara and with the State Office of Planning and Research, as required. Such Notice shall include the required information and shall include any required review or processing fee.

(d) Statements of Overriding Consideration.

If the City decides to approve a project for which significant adverse environmental consequences have been only partially mitigated, the City shall make a Statement of Overriding Consideration identifying the specific reasons that influences its decision.

(e) Statute of Limitations.

The filing of the Notice of Determination shall start a thirty (30) day statute of limitations on court challenges to the approval. Such filing of the Notice shall be made at the earliest possible time following the final decision on the Project.

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13. Categories of Proposed Projects and Time Limits for CEQA Procedure.

The provisions of CEQA are a useful planning tool to enable environmental constraints and opportunities to be considered before project plans are finalized. EIRs should be prepared as early in the planning process as possible to enable environmental considerations to influence project program or design. The provisions of the State CEQA Guidelines are hereby adopted as time limits, subject to modification by resolution of the City Council.

14. Public Agencies for Review and Comments.

The following list of public agencies should be considered in determining which agencies should be consulted during the review period for the EIR. The draft EIR should be sent only to responsible agencies and those agencies which have jurisdiction by law with respect to the project, or to those agencies which have special expertise or interest with respect to the environmental impacts involved, or who have filed a written request with the City Clerk.

A general list of public agencies follows:

- (a) State Office of Planning and Research (OPR)
- (b) Association of Bay Area Governments (ABAG)
- (c) Clerk of the Santa Clara County Board of Supervisors
- (d) Airport Land Use Commission (ALUC)
- (e) Regional Water Quality Control Board
- (f) Regional Air Quality Management District
- (g) U.S. Army Corps of Engineers
- (h) California Department of Transportation District #4 (Caltrans)
- (i) California Department of Fish and Game
- (j) Santa Clara County Transportation Agency
- (k) Santa Clara County Health Department

- (l) Santa Clara County Planning Department
- (m) Santa Clara County Parks and Recreation
- (n) U.S. Fish and Wildlife Service
- (o) Santa Clara Unified School District
- (p) Cupertino Union School District
- (q) Campbell Union School District
- (r) Santa Clara Valley Water District
- (s) Metropolitan Transportation Commission (MTC)
- (t) City of San Jose
- (u) City of Cupertino
- (v) City of Sunnyvale
- (w) Local Agency Formation Commission (LAFCO)

15. Mitigation Monitoring and Reporting Procedures.

The City will adopt a mitigation monitoring and reporting procedures to ensure the effective implementation of mitigation measures which may be required as a result of the environmental review process.

RESOLUTION NO. 5845

RESOLUTION OF THE CITY OF SANTA CLARA
ADOPTING THE CEQA MONITORING OR REPORTING PROGRAM

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA,
as follows:

WHEREAS, the purpose of this Resolution is to comply with the
Legislation enacted as Public Resources Code §21081.6, which
requires public agencies to adopt a Monitoring or Reporting Program
for monitoring the conditions of approved projects which are
imposed intentionally to mitigate or avoid significant effects on
the environment; and,

WHEREAS, the City finds and determines that in order to
mitigate or avoid significant effects on the environment, the City
of Santa Clara shall require that a Monitoring or Reporting Program
be adopted for those changes which it has required in a project or
which have been made a condition of project approval.

NOW, THEREFORE, BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF
THE CITY OF SANTA CLARA, as follows, to wit:

(1) That when findings are made in approving a project for
which an Environmental Impact Report, (EIR), or Negative
Declaration, (ND), has been adopted, pursuant to §21081(a) of the
Public Resources Code, the City decision-making body shall adopt a

Monitoring or Reporting Program for those changes to the project which it has adopted as a condition of project approval in order to mitigate significant effects on the environment. Where feasible, the Monitoring or Reporting Program shall be contained within the EIR or ND to the extent possible and shall be stipulated as a condition of the granting of building permits or commencement of the approved activity, as appropriate relative to the findings;

(2) That the Monitoring or Reporting Program shall identify the specific actions required to implement each mitigation measure or project change, the responsible agency or agency having jurisdiction over natural resources affected by the project, the person(s) or agency responsible for carrying out the action, and the time period(s) for monitoring or reporting actions;

(3) That each responsible agency or agency having jurisdiction over natural resources affected by the project shall submit monitoring or reporting comments to the City for mitigation measures which would address the significant environmental effects identified by the responsible agency or agency having jurisdiction over natural resources affected by the project. The Monitoring or Reporting Program shall identify complete and detailed performance objectives, or refer the lead agency to appropriate, readily available guidelines or reference documents;

(4) That compliance or noncompliance with this requirement for identification of complete and detailed performance objectives by a responsible agency or agency having jurisdiction over the natural resources affected by the project shall not limit the

authority of the responsible agency or the agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law;

(5) That the developer or applicant shall be responsible for notifying the City, the responsible agency or agency having jurisdiction over natural resources affected by the project, or others identified as monitors or reporters, of the commencement of the project, and the schedule of work to be performed in accordance with the Monitoring or Reporting Program;

(6) That the Monitoring or Reporting Program shall be administered by the Director of Planning and Inspection (Director) or other employee as may be designated, in writing, by the City Manager. Monitoring shall be recorded in a manner approved by the City and reporting shall be made in writing to the appropriate body. Records of the Monitoring and Reporting Program, including the record of actions by the City for enforcement or in regard to necessary changes to the Program, shall be available to the public;

(7) That fees for environmental review applications and monitoring programs shall be adopted by resolution of the City Council. Such fees shall be included within any environmental review fees and will be required to be paid at the time of application. Additional fees may be required to offset direct costs of monitoring or reporting requirements, including City staff time, as approved by the Director.

(a) Copies of environmental documents and related Monitoring and Reporting Program records will be made available to the public and may be obtained for the actual cost of reproduction;

(8) That the City may impose penalties for noncompliance of the Monitoring or Reporting Program, punishable as an infraction penalty, or other administrative or judicial sanctions, including but not limited to, cease and desist orders, restraining orders, and other injunctive relief, on any person, firm or corporation, whether as principal or agent, employed or otherwise, violating or causing or permitting the violation of the provisions of this ordinance.

(a) If the Director determines that any firm, person, or corporation has failed to carry out the project changes or mitigation measures, the firm, person, or corporation responsible may be determined to be guilty of an infraction and subject to the penalties identified in "The Municipal Code of the City of Santa Clara, California." Where appropriate, penalties may involve reparation of damages resulting from noncompliance or violations and may be applied in addition to those noted above.

(b) Appeal of Decisions of the Director:

(i) Within ten working days of the decision of the Director, this determination may be appealed by the City Council on their own motion or by anyone to the City Council by filing written Notice of Appeal with the City Clerk, including any required fee. The Clerk shall schedule the Appeal hearing for the next regularly scheduled meeting of the City Council. If an Appeal is not timely

filed, the Director's decision shall be deemed final.

(ii) At the regular meeting at which the Appeal shall be presented, the City Council shall hear brief arguments by the appellant, the project applicant, owner or responsible person or their representative, the Director, City Attorney or other City staff or other person with appropriate involvement. Based on the record established before the Director and by this oral argument, the City Council shall affirm, revoke or modify the decision of the Director. Copies of the City Council's decision shall be duly filed with the project's program records and be sent to the applicant, owner and responsible persons; and,

(9) That if any section, subsection, sentence, clause or phrase of this Resolution is for any reason held by a Court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Resolution. The City Council hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

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I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 14th day of

September, 1993, by the following votes:

AYES: COUNCILORS: Ash, DeLozier, Gilmor, Nadler, Procnier and
Mayor Souza
NOES: COUNCILORS: None
ABSENT: COUNCILORS: Jeffries
ABSTAINED: COUNCILORS: None

ATTEST: J. E. Boccignone
J. E. BOCCIGNONE
City Clerk
City of Santa Clara

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